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**ORDER RE: MOTION TO
REDUCE SENTENCE**

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1 (Reduction in Term of Imprisonment as a Result of Amended Guideline
2 Range). The fact that the sentence resulted from a binding plea agreement
3 is not dispositive as to the applicability of 18 U.S.C. § 3582(c)(2). See
4 Freeman v. United States, 131 S. Ct. 2685 (2011). Defendant's motion
5 appears to be based on U.S.S.G. Amendment 750, which reduces the base
6 offense level for crack cocaine offenses in U.S.S.G. § 2D1.1(c) by applying
7 an 18:1 crack-to-powder ration (rather than a 100:1 ratio), effective
8 November 1, 2011. See U.S.S.G. Amend. 750, Supp. to App. C,
9 Amendments to the Guidelines Manual.

10 It is undisputed that Defendant pled guilty to Count One of the
11 Indictment, i.e., conspiracy "to distribute 50 grams and more of
12 methamphetamine (actual), a Schedule II Controlled Substance," in violation
13 of 21 U.S.C. §§ 841(a)(1), 846. On November 1, 2010, Defendant was
14 sentenced to 135 months incarceration plus five years of supervised
15 release. That sentence was based on an offense level determined by the
16 application of the guidelines for methamphetamine, not crack cocaine.
17 U.S.S.G. amendment concerning crack offenses is hence inapplicable to
18 Defendant. See Bibbs v. United States, 2012 U.S. Dist. LEXIS 24295 (S.D.
19 Cal. Feb. 27, 2012); United States v. Armenta-Lopez, 2008 U.S. Dist. LEXIS
20 81714 (C.D. Cal. Apr. 7, 2008).

21 Defendant disputes this point, relying principally upon the Sentencing
22 Opinion in United States v. Hayes, 948 F. Supp. 2d 1009 (N.D. Iowa 2013)
23 (Bennett, J.). In Hayes, the district judge voiced a policy disagreement with
24 the methamphetamine guidelines and applied a variance, finding that a
25 sentence within the guidelines range would be excessive. Defendant cites
26 several other cases applying variances, (Reply at 6-7), but none are
27 resentencing orders based on a Guideline amendment concerning a
28 methamphetamine conviction. Defendant therefore fails to satisfy the first,

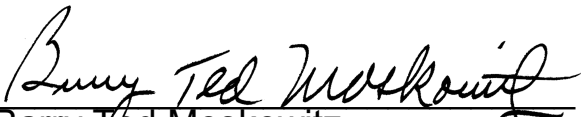
1 “based on” prong of the analysis, and is ineligible for a reduction of
2 sentence pursuant to 18 U.S.C. § 3582(c)(2) at this time.

3 However, a proposed amendment to the Guidelines may very well
4 lower Defendant’s base offense level by two levels. See Proposed
5 Amendment 782, U.S.S.G. App’x C, 2014 ed. (reducing by two levels the
6 offense levels assigned to the quantities described in section 2D1.1 and
7 making corresponding changes to section 2D1.11). This amendment may
8 take effect on November 1, 2014. Therefore, the Court continues this
9 motion until January 16, 2015 at 3:00 p.m., at which time it will consider the
10 effect of the amendment.

11 The parties shall submit briefs on the effect of the amendment on or
12 before December 19, 2014.

13 **IT IS SO ORDERED.**

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20 DATED: October 1, 2014


Barry Ted Moskowitz
Chief United States District Judge